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REMEDY UNDER WORKMEN'S COMPENSATION ACTS NOT EXCLUSIVE OF RIGHTS AGAINST THIRD PERSONS FOR INJURIES.

Merrill v. Marietta Torpedo Co., 92 S. E. 112, decided by West Virginia Supreme Court of Appeals, was an action by a servant for injury suffered by him in the course of employment. But the suit was not against his employer but against an independent contractor causing such injury. In such case, there would not be, let it be assumed, any right of action against the employer at all, were there no Workmen's Compensation Act.

The matter is thus stated by the West Virginia court: "Plaintiff's injury was not due to the negligence of his employer, but, according to the finding of the jury, to the negligence of an independent contractor to do a particular work. The Compensation Act does not deny right of action to a workman for injury received in the course of his employment, unless the negligence is that of the master, or such for which the master was liable at common law. If the employe is injured in the course of his employment, he is entitled to compensation out of the fund, whether his injury was occasioned by the negligence of the master or not; if occasioned by the negligence of a third person, his right to compensation out of the fund is not thereby affected, nor is his right of action against such third person causing the injury impaired. The provision of the act is somewhat in the nature of life and accident insurance. That a person may be protected by accident insurance and at the same time have right of action against the person whose negligence produced the accident resulting in his injury is well settled."

It would seem from this statement that the compensation act of West Virginia creates a fund by assessment on businesses accepting or in any way subject to the provisions of the act. But in states not providing for such a fund, the theory of compensation for workmen being for injury suffered in the course of business, regardless of negligence of master, in effect leaves such a fund in the hands of employers respecting their workmen.

But in many cases servants are injured by the concurring negligence of masters and third persons. What the master is responsible for is on no theory of negligence at all, but what the third person concurs in doing he is responsible for only upon that theory. How in such a case does the release of one tortfeasor affect the other's liability?

The principle under the Compensation Act that negligence of master is not considered is a principle that is confined entirely to the relation of master and servant, and with which a tortfeasor concurring with the master has no concern.

At the same time as the act intends to refer only to master and servant relations, yet, if it has a necessary bearing outside of that relation, it ought be considered.

Does a proceeding against the master, who can be proceeded against under the act, and collection from him release a concurring tortfeasor? Or would a proceeding against such tortfeasor and collection from him discharge the master? It seems to us that, if what is obtained from the master is, as the court says, in the nature of life and accident insurance, the servant's proceeding against him is nothing in the way of defense to the concurring tortfeasor. But may such tortfeasor being sued and paying have any right of contribution from the master, who so far as he is concerned may himself be a tortfeasor? This question is simple so far as independent contractors

or other third persons, whose acts alone cause injury, are concerned, but it does not seem to us altogether so readily solvable where there is concurrence by third party with acts by the master resulting in injury.

NOTES OF IMPORTANT DECISIONS.

BANKRUPTCY—SET-OFF BY BANK OF DEPOSITS AGAINST DEPOSITOR'S DEBT AS PREFERENCE.—In Fourth Natl. Bank v. Smith, decided by Eighth Circuit Court of Appeals, it is held permissible by a bank to set-off the amount of deposits against a depositor's indebtedness, though the bank knows of depositor's insolvency, without the same being a preference forbidden by the bankruptcy statute.

There is an interesting review of Supreme Court decisions on this question, and the conclusion is reached, that this set-off may be made, because of anticipation of bankruptcy, provided, nevertheless, the deposits are made in due course of business and are not built up.

Also, it appears that the set-off may be made as well before as after adjudication in bankruptcy, nor is it necessary that the bankruptcy court should make the set-off, but the bank itself can exercise the right of set-off.

For cases showing that set-off was denied, because deposits were made in an unusual way as being "built up," reference is made to recent cases by the supreme court. Mechanics' & Metals Natl. Bank v. Ernst, 231 U. S. 60; Nat. City Bank v. Hotchkiss, 231 Sup. Ct. 50, and one by Circuit Court of Appeals; In re National Lumber Co., 212 Fed. 928, 129 C. C. A. 448.

The view taken by Supreme Court is that the bankruptcy act does not intend "to defeat the right of set-off recognized and enforced in the law," where there are mutual debts and credits.

ATTORNEY AND CLIENT—CONTINGENT FEE IN CONTEMPLATED SUIT FOR BREACH OF PROMISE TO MARRY.—The Supreme Court of Missouri has ruled that an attorney suing for services under a contingent fee contract for one-half of what his client might recover in a breach of promise case, stated no case against his woman client where she married the proposed defendant, as all his client could recover was by operation of law. Crow v. Mitchell, 192 S. W. 417.

Both of the parties owned property at the time of the marriage and there was no agreement in regard to it, but the petition was predicated on the idea of there being an agreement. Plaintiff sued upon the supposed agreement and not upon the value of the marriage. Therefore his proof failing as to this, his action as predicated and tried failed.

This was a pity, as it would have made an interesting question for the court to have passed upon. The only interest the wife acquired was, like the plaintiff's fee, contingent. If she survives him, she, as widow, would have a statutory interest. And then it could have been determined whether or not marrying a husband, who relented after suit for breach of promise was brought, was its own sufficient reason, independently of all other considerations. The entry into marriage should be conclusively supposed not to heal or mend a broken promise thus to do. It is in fulfillment of a purpose that the law encourages, but it may serve to minimize damages of a prior breach of promise. The breach merely ceased to continue. As the defendant in this case was when she contracted, a widow, the marriage not only brought a surcease of sorrow, but amounted to a resurrection.

PATENT — LICENSE CONTRACT CONSTRUED AS ATTEMPTED EVASION.—In 84 Cent. L. J. 335, our editorial treats of the repudiation of tying-clause contracts limiting use of patented articles and the repudiation by U. S. Supreme Court of the Mimeograph and Button Fastener cases.

On the same day appeared another decision in which an adroit license contract was declared to be, in effect, a sale contract regarding a patented article. Strauss v. Victor Talking Machine Co., 37 Sup. Ct. 412. This case refers to Miles Medical Co. v. Park & Sons, 220 U. S. 373, and Bauer v. O'Donnell, 229 U. S. 1, concerning plans of marketing and contracts modified cleverly to take advantage of distinctions suggested by those cases.

So in the Talking Machine case, what the contract calls a "use" amounts really to a sale and "courts would be perversely blind if they failed to look through such an attempt as the 'License Notice' thus plainly is to sell property for a full price and yet to place restraints upon

its further alienation, such as have been hateful to the law from Lord Coke's days to ours because obnoxious to the public interest."

Further, the court says: "The scheme of distribution is not a system designed to secure to the plaintiff and to the public a reasonable use of its machines, within the grant of the patent laws, but is in substance and in fact a mere price-fixing enterprise, which if given effect, would work great and widespread injustice to innocent purchasers, for it must be recognized that not one purchaser in many would read such a notice, and that not one in a much greater number, if he did read it, could understand its involved and intricate phraseology, which bears many evidences of being framed to conceal rather than make clear its real meaning and purpose. It would be a perversion of terms to call the transaction intended to be embodied in this system of marketing plaintiff's machines a 'license to use the invention.'"

We like this reading, but at the same time we confess it seems to be going some distance to say that a license for marketing a patented article is to be condemned, because licensees may not read or understand, if they did read, the license contract, if a court should rule that it was such. To say that concealment is intended and, therefore, there is fraud, when the words of a contract are written for acceptance, is to differentiate the public into the unwary and the wary. For the former, public policy is violated; for the latter, not. However, as to provisions in insurance policies, fine print has been sometimes rejected, where it states conditions.

APPEAL AND ERROR—EXPIRATION OF RESPONDENT OFFICER'S TERM OF OFFICE.—In Pullman Co. v. Knott, Comptroller, 37 Sup. Ct. 428, it was held that where in an injunction against a state officer from levying and assessing a tax upon the gross receipts of a foreign corporation, the expiration of the officer's term of office pending writ of error to U. S. Supreme Court makes the writ of error abate, there being no state statute giving authority for substitution of his successor.

The injunction raised the question of the tax being void as under the federal Constitution, the state courts deciding against this contention, but several cases are cited to support the ruling here made. They support the proposition that the duty on the officer was a personal one and any successor might discharge the duty the one sued had refused to discharge and, therefore, he ought not to be mulcted with costs for the fault of his predecessor, and that, were a demand made upon him, he might discharge the duty and in any event the successor was not in privity with his predecessor, nor was he his personal representative.

This is difficult to appreciate. It is easy to say the successor might do what his predecessor had refused to do, but, if the courts had sustained the predecessor in refusing, it would look like an abuse of official power for the successor to grant what his predecessor had refused to grant. Plaintiff in error contended that it had been held in New Orleans v. Citizens' Bank, 167 U. S. 371, that former judgments adjudicating rights against states are binding in subsequent actions and the mere change of office as to the person holding the office does not destroy what has been adjudged. The court said that does not touch the question. "It was held in the Citizens' Bank case that a holding that a contract for exemption from taxation existed bound subsequent officers of the state. The difficulty here is that this proceeding in error, since the expiration of Knott's term of office expired, leaves no party defendant in error to stand in judgment." It would seem, therefore, that had the plaintiff in error have succeeded as to its claim of exemption in this case, the defendant in error had he have appealed could, by his successor, have prosecuted his writ. In other words, rights being adjudicated, the state cannot be refused hearing in an appellate tribunal by any expiration of the term of an officer who as representing the state has been sued, while this is not true, if his adversary were appealing. And yet the decision rendered and sought to be reviewed stands as the law until reversed in either case.

The opinion says: "In this case the judgment of the state court was rendered June 26, 1915; the order allowing the writ of error was filed September 24, 1915, and the record filed in this court, October 8, 1915. It does not appear that any attempt was made to advance the case, in view of Knott's term of office expiring in January, 1917. As the law now stands, we have no alternative except to dismiss the writ of error for want of a proper defendant to stand in judgment." But would it be a matter of public interest, giving reason for advancing a cause, that plaintiff in error would lose his standing in court unless his cause were advanced? And if so, might not the court be strenuously implored to hand down its decision very quickly, that is to say, before defendant's term of office expired?

THE REIGN OF LAW.

Two great institutions of the English-speaking world challenge our admiration. One is the Supreme Court of the United States and the other the Judicial Committee of the Privy Council. Both have jurisdiction over states and provinces, each sovereign within the sphere of its authority. Surely the successful and satisfactory exercise of this jurisdiction contains the promise and potency of a supreme court of the civilized world, which shall bring the future of humanity under the "majesty of the law," to quote the eloquent phrase of the distinguished French statesman, Bourgeois.

In the United States and in the British Empire these illustrious tribunals enforce the unquestionable supremacy of the civil power and the universal rule of equal law. We are apt to regard the universal rule of equal law as a matter of course; but it is the result of a long struggle, and can be maintained only by constant vigilance and effort.

Scientists tell us that there is always a danger of reversion to inferior types. So in matters of government, there is constant danger of the usurpation of arbitrary power, and against this Kipling uttered a timely warning when, in his poem on "The Old Issue," he said:

All we have of freedom, all we use or know,
This our fathers bought for us, long and long ago.
Ancient right unnoticed as the breath we draw,
Leave to live by no man's leave, underneath the law.

Lance and torch and tumult, steel and grey goose wing,
Wrenched it inch and all slowly from the King.
So they bought us freedom, not at little cost,
Wherefore we must watch the King, lest our gain be lost.

Howso great their clamour, whatsoe'er their claim,
Suffer not the old King under any name.
Here is naught unproven, here is naught to learn,
It is written what shall follow if the King return.

He shall mark our goings, question whence we came,
Set his guards about us as in freedom's name.
He shall break his judges if they cross his word,
He shall rule above the law, calling on the Lord.

He shall peep and mutter; and the night shall bring
Watchers 'neath our window lest we mock the King.
Strangers of his council, hirelings of his pay,
These shall deal our justice, sell, deny, delay.

Cruel in the shadow, crafty in the sun,
Far beyond his borders shall his teaching run.
Sloven, sullen, savage, secret, uncontrolled,
Laying on a new land evil of the old.

Long forgotten bondage dwarfing heart and brain,
All our fathers died to lose he shall bind again.
All the rights they promised, all the wrong they bring,
Stewards of the judgment, suffer not this King.

One of the crowning features of the British system under which we in Canada live is the final authority, in matters of law, of the Judicial Committee of the Privy Council, or, to speak more accurately, of the king speaking on the advice of the Judicial Committee of the Privy Council.

So far as the Province of Ontario is concerned, this is founded on a statute passed by the first Parliament of Upper Canada, held at Niagara, in 1792, which enacted that we should be governed by the laws of England, and that there should be an appeal to the king in council. This statute has been re-enacted from time to time, and is still in force.

According to Blackstone, under the British Constitution the king is the fountain of justice and the general conservator of the peace of the empire. By the fountain of justice the law does not mean the author or original, but the distributor. Justice is not derived from the king as his free gift, but he is the steward of the public to dispense it to whom it is due. Blackstone quotes Bracton for the proposition that for this very purpose was the king created and elected, in order that he might render justice to all. *Ad hoc autem creatus et electus ut justitiam faciat universis.*

In the early days of arbitrary power, monarchs sometimes decided cases personally, but it has long been settled that justice must be distributed through the regular courts. The last attempt to evade this salutary rule was that of James I, in the celebrated case of Evocation, when Coke stoutly replied to the monarch that he could only in such matters speak through his courts (*per curiam*), observing that the law was the golden metwand and measure to try the causes of subjects. In the following reign of Charles I (1641), it was enacted that all questions of property, etc., "ought to be tried and determined in the ordinary courts of justice and by the ordinary courts of law."

There is no more danger of monarchical tyranny in Canada than in any other part of this continent, nor, indeed, so long as the British navy is strong enough to protect the liberties of Europe and the security of America, of the divine right of the Kaiser. When recently (to adopt the classical language of Lincoln) the British people decided to dedicate themselves more fully to the great task remaining before us, and that from the honored dead of the Allies who had given to the cause of humanity the last full measure of devotion, we should all take increased devotion to that sacred cause, and to this end highly resolved that those dead shall not have died in vain, and that Europe, under God, should have a new birth of freedom and that the government of the people, by the people, and for the people shall not perish from the earth, as it would if Prussian militarism triumphed; and when it was decided in form by their leaders, but in reality (whether rightly or wrongly remains to be proved) by the British people that these lofty purposes would be more speedily achieved under Lloyd-George than under Asquith, there was no difficulty in promptly carrying out the necessary change. Indeed, the fact that such a change as that from Asquith to Lloyd-George would be impossible before the presidential election of 1920 (apart from impeachment), demonstrates that the British system is more elastic and responsive to the popular will than the United States system.

There was at one time danger that the United States would be brought under the influence of German *Kultur*. General Bernhardi, who advocated the present war, predicted as the result world dominion for the Germans, or their downfall. The danger of such world dominion may be said to have been warded off by the victory of the Marne. And, by the way, when we reflect on what the French so gloriously did in winning the battle of the Marne and in holding Verdun, we surely should hear no further talk of the decadence of Latin civilization, to which humanity owes so much, including the Roman law. That system still governs a large part of the human race, not by reason of imperial power, but by the imperial power of reason, if we may so paraphrase the famous saying of Portalis, *"non ratione imperii, sed imperio rationis."* As Sir Henry Maine, with clear insight long ago pointed out, no student, without studying Roman law, can really know international law, on the vindication of which the future of the human race depends, because it alone protects the commonwealth of the nations from permanent anarchy.

There is, fortunately, another alternative besides those stated by Bernhardi—world dominion or downfall—namely, the reign of law. This is clearly brought out in the historical reply of the Allies to President

Wilson. The Allies require, not the annihilation of Germany, but complete reparation, adequate guarantees, which surely must include the just punishment of those personally responsible for such crimes as the murder of the non-combatants drowned when the *Lusitania* was illegally sunk, and the maintenance of the public law of Europe, protecting each of the nations, great and small, in their right to life, liberty and the pursuit of happiness, each developing its own culture according to its own genius. Even Germans should be permitted to develop their own kultur, provided they are not permitted to impose it by force on others.

There are, however, other dangers to our liberties to which citizens of the United States and Canada are both exposed, and which threaten what Chief Justice Fuller aptly called an enduring government of laws, not of men. Largely as a result of the violation of the fundamental principles of government, and of disregard of the warnings of Lincoln, who understood these principles very thoroughly, it has come about that practically amounts varying from 30 to 60 per cent of the taxes collected in both countries are wasted. In Canada we designate the main cause of this waste as "patronage." Ex-President Taft told us in Toronto that the phrase used in the United States was "pork barrel appropriations." In each case on analysis this means buying the votes of the people with their own money, or rather the votes of some of the people with the money of the others.

Some have looked with longing eyes at the much-heralded efficiency of German bureaucracy. But this is a case of distant fields looking green. One of the influential German journalists recently advocated the introduction of what he called the American custom of lynching as the most expeditious method of getting rid of the oppression of German bureaucrats. This, by the way, and the advocacy by Germans of the deposition of the Kaiser, I regard as the first authentic signs of the beginning of the end of the Prussian military caste and of the war.

Others have advocated the adoption of initiative, the referendum, and the recall, which all strike at the fundamental principles of representative government. They are indeed futile attempts to evade the consequences of disregarding the ancient admonition that we should choose as administrators (including legislators) able men who fear God and hate covetousness.

Not by such devices, nor indeed by any means, are these consequences of incompetence, inefficiency, and dishonesty, evitable. They are all pernicious, but especially the recall of judges which involves a denial of justice, and justice was truly described by Alexander Hamilton as the end of government. Indeed, it always seems to me to be tantamount to expressing approval of the mob who cried "Crucify Him," and, "Not this Man, but Barrabas," who was a robber. The clamor of the mob was not the voice of justice, nor yet the true voice of democracy. We cannot too strongly emphasize the warning of Burke, who, after a profound study of the fundamental conditions of free institutions, said, "Liberty to be enjoyed must be limited by law: for where law ends there tyranny begins: and the tyranny is the same, be it the tyranny of a monarch or of a multitude; nay, the tyranny of the multitude may be the greater, since it is multiplied tyranny."

The two institutions undoubtedly most influential in upholding the supremacy of law, which is the fundamental condition of true liberty, are the Supreme Court of the United States and the Judicial Committee of the Privy Council. Space is not available to trace the intensely interesting history of the jurisdiction of the Judicial Committee of the Privy Council. It must suffice to say that it was established in its present form in 1833, by an act introduced by Brougham, one of the greatest of law reformers. This act has been, from time to time, amended by subsequent statutes, including the Appellate Jurisdiction Act of 1813, which provided for two additional judges. The only one of these amendments

that need be further referred to is that passed in 1895, authorizing the addition of five members of the Judicial Committee from Canada, Australia, South Africa and other parts of the British Dominions. These five must be or have been judges of certain specified Canadian, Australian or South African courts, or of some other superior court in His Majestys dominions, to be named by competent authority, and must be members of the Imperial Privy Council.

The Judicial Committee is to be distinguished from the House of Lords, and by the House of Lords in this connection I mean the judicial body and not the legislative body of the same name which earned the gratitude, not merely of the British Empire but also of all friends of civilization, by rejecting the so-called Declaration of London. If this declaration had become law, it would have seriously handicapped the British navy, certainly in this war the bulwark of liberty, and would have been a potent factor in favor of Prussian militarism. Fortunately, owing to its wise rejection by the House of Lords, a co-ordinate part of the British Parliament, it did not become law, and never became binding upon Great Britain. To allege, as some who should know better erroneously do, that Great Britain, which is fighting for the vindication and maintenance of international law, violated the Declaration of London, is, therefore, the sheerest nonsense.

The judicial body known as the House of Lords is composed of the same judges as sit in the Judicial Committee of the Privy Council, and has a jurisdiction defined by an imperial act passed in 1876. While the judges are largely the same, there are some important distinctions between these two tribunals.

While cases argued before the Judicial Committee of the Privy Council are really decided by the judges who hear them, the order issued is the order of the King made on their advice. Some important consequences follow from this. The Privy Council advises the Crown, and in doing so is bound not to record dissentient opinion. This was provided for in 1627, and the prohibition was reaffirmed in 1878. Only one set of reasons for judgment is given. One of the greatest living authorities on jurisprudence, Sir Frederick Pollock, states as the criterion of just laws in a civilized community "generality, equality and certainty," and the rule which prevails in the Privy Council tends greatly to promote all these, and especially the desirable quality of certainty. The House of Lords is bound by its own decisions in accordance with the rule laid down by Blackstone, that the duty of the judge is to abide by former precedents. This rule is not binding on the Judicial Committee of the Privy Council, which is required to decide in each instance according to the very right and justice of the particular case before it.

Some eminent jurists and statesmen have advocated a great Imperial Court of Appeal to take the place of the House of Lords and the Judicial Committee of the Privy Council. There are constitutional and other difficulties in the way, but the obvious advantages are so fundamental that it is to be hoped that beneficial reform will soon be accomplished.

The Lord Chancellor is a member of the Judicial Committee and his position is a striking example of the English disregard of the doctrinaire division between the judicial, executive, and legislative powers, for the Lord Chancellor is head of the Judiciary, a member of the cabinet or executive government, and also a member—indeed, the presiding officer—of the second chamber of the British Parliament.

Whatever may be the theoretical objections, no practical difficulties have arisen. The fiercest critics of Lord Chancellor Haldane have not questioned his high qualifications for his judicial work, nor his fairness and impartiality when acting as a judge. Lord Haldane was the honored guest of the American Bar Association at their unique meeting held in Montreal. This memorable

meeting was, to a large extent, the source of the inspiration which, it is now manifest, will make the Canadian Bar Association a potent factor in promoting the solidarity of Canada. The United States and Canada have similar problems to solve and in both countries it is vital to prevent any serious cleavage between the east and the west.

It is interesting to recall that Lord Haldane was one of three counsel before one of the English courts of whom, over a quarter of a century ago, a member of a firm of solicitors for the Bank of England remarked to the Attorney General of Ontario then in London: "Do you see those three Scotchmen? Every one of them will become Lord Chancellor of England." The first of the three to become Lord Chancellor was Lord Loreburn; the second, Lord Haldane, and the third was Lord Finlay, who last December became the Lord Chancellor of the Lloyd George government. It is fortunate that at the present juncture the highest British Appellate Court is presided over by one in whose fairness, impartiality, and accurate knowledge of international law, lawyers in the United States have such complete confidence.

The close relations between the two countries are also indicated by the interesting statements that the first Lord Chancellor of Queen Victoria, Lord Lyndhurst, was born in Boston; and the last, Lord Herschel died in Washington. The first of these assertions needs a little explanation, however.

One of the Boston merchants whose tea was thrown into Boston harbor had a daughter who married Copley, the celebrated painter, and their son (born in Boston in 1772, when it was a British town) actually became three times Lord Chancellor of England. At the time of the French Revolution, young Copley was winning high mathematical honors at Cambridge University in England, and when Queen Victoria was born he was occupying the office of solicitor-general. During the first four years of the reign of Queen Victoria, Lord Cottenham, the Lord Chancellor of her predecessor, continued in that office; but in 1841 he was succeeded by Lord Lyndhurst, as Copley was then called, and in that sense the latter can be said to be the first Lord Chancellor of—that is, selected by—Queen Victoria. He was Lord Chancellor until 1848, and continued to remain a prominent figure in public life until after the return from Canada, in 1860, of the Prince of Wales (afterwards Edward, the peacemaker).

After the fall of one of the British governments, of which Lord Lyndhurst was a member, he went to Paris and consoled himself by marrying at the British embassy a handsome young wife, who took such good care of him that he lived to be 92, and such good care of herself that she lived on into the present century, surviving Queen Victoria, whom her husband had served so faithfully, and dying more than a century and a quarter after her husband was born.

Lyndhurst was one of those whom Tennyson wrote in 1851:

And statesmen at her council met
  Who knew the seasons when to take
  Occasion by the hand, and make
The bounds of freedom wider yet,

By shaping some august decree
  Which kept her throne unshaken still,
  Broad-based upon her people's will,
And compass'd by the inviolate sea.

Space would not permit me to give any adequate account of the invaluable services to the United States of the Supreme Court, or of the similar services rendered to Canada and the other parts of the British empire by the Judicial Committee of the Privy Council. In Canada there were angry disputes between provinces of the different races and diverse creeds and it was most fortunate that there existed such a tribunal as the Judicial

Committee of the Privy Council to decide such disputes as they did and to do it so satisfactorily.

The Supreme Court of the United States has rendered notable services, not only to the United States, not only to jurisprudence and international law, but also to the cause of civilization. The fame of its great jurists of whom I shall mention only Marshall, Story and Brewer, extends far beyond the boundaries of the United States; indeed, wherever the gladsome light of jurisprudence illumines the path of progress.

The above was written before President Wilson's noble message which will mark an epoch not only in the history of the United States but also in the history of international law.

In acting upon this message Congress has emphatically adopted the eloquent declaration of Wordsworth:

"We must be free or die,
Who speaks the tongue that Shakespeare spoke,
The faith and morals hold, that Milton held."

And if, as recommended by the President, the United States will take immediate steps "to exert all its power and employ all its resources to bring the government of the German empire to terms and end the war" the result should surely be not merely to shorten the war but to insure the triumphant vindication of international law.

The president truly says, "We have no selfish ends to serve."

The British Prime Minister, Mr. Asquith, said:

"We shall never sheathe the sword (which we have not lightly drawn), until Belgium recovers in full measure all, and more than all, that she has sacrified, until France is adequately secured against the menace of aggression, until the rights of the smaller nationalities of Europe are placed upon an unassailable foundation, and until the military domination of Prussia is wholly and finally destroyed;" demonstrating that the British ends are likewise unselfish.

The two great English speaking nations, so fighting together for such noble and unselfish ends, will form a blood brotherhood of the trenches which shall constitute a sure guarantee of the maintenance of international law and of the peace and civilization of the world.

It cannot be too often reiterated that the United States was not a party to the treaty guaranteeing the neutrality of Belgium as Great Britain was.

On the other hand, the United States, having taken a prominent part in promoting the Hague conventions on which Belgium relied in vain, is under very special obligations to Belgium and will no doubt take steps to use every possible means to drive every live German soldier out of Belgium, to punish those guilty of such atrocities as the murder of Edith Cavell, and to rescue the Belgians as speedily as possible from a slavery more horrible than that from which Lincoln freed the South.

When Prussian militarism and autocracy are destroyed, and right vindicated, then surely we can truly say with President Wilson:

"We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the individual citizens of civilized states."

In other words, we shall be at the beginning of the reign of international law.

J. MURRAY CLARK.

Toronto, Canada.

CARRIER OF PASSENGERS—PUNITIVE DAMAGES.

ILLINOIS CENT. R. CO. v. HAWKINS.

Supreme Court of Mississippi, Division A. March 26, 1917.

74 So. 775.

A railroad company, which knowingly and intentionally delays a passenger train 2½ hours to accommodate other persons intending to become passengers, in violation of rights of a passenger, is guilty of "willful neglect of duty."

HOLDEN, J. Miss Margaret M. Hawkins, the plaintiff, a young lady 23 years of age, resident of Atlanta, Ga., brought suit in the circuit court, Second Judicial District, of Carroll County, to recover $2,990 damages alleged to have been sustained on account of the "wanton, willful, negligent, and reckless conduct" of appellant railroad company in failing to transport her from Vaiden to Holly Springs, Miss., on schedule time, on one of its local passenger trains, in May, 1915, and from a verdict and judgment for $800, actual and punitive damages, in favor of Miss Hawkins, the railroad company appeals here.

The facts in the case appear to be that Miss Hawkins desired to go from Vaiden, by way of Holly Springs, to Atlanta, and she inquired through her uncle of the agent of appellant railroad at Vaiden about the train connections with the Frisco Railroad at Holly Springs, and was informed by the agent that she would make connection with the Frisco train at Holly Springs for Atlanta by traveling on one of appellant's local trains. She boarded appellant's passenger train at Vaiden at 4:35 p. m., with the expectation of reaching Holly Springs at 8:35, in accordance with the published schedule and the information given her by the agent, and would make connection there with the Frisco train going to Atlanta at 10:40 p. m. After she delivered her ticket, or mileage, to the conductor, and informed him of her desire and expectation to make the connection at Holly Springs for Atlanta, the train arrived at Oxford, where, by order of the superintendent of the railroad, it was detained for about 2 hours and 30 minutes for the purpose of waiting for, and receiving, a number of school girls as passengers for Holly Springs. On account of this delay of 2 hours and 30 minutes at Oxford, the train did not arrive at Holly Springs until after the Frisco train had left for Atlanta. Appellee was compelled to remain in the depot hotel at Holly Springs during the night, and departed for Atlanta at 9:35 a. m., next day. She complains that she had to pay her hotel bill, and spent a sleepless and troubled night, suffering much nervousness, and subsequently had a week's illness after arriving at Atlanta. She claims that she suffered greatly in body and mind in having to stay at the hotel alone, as she was not accustomed to traveling alone, and that her situation was uncomfortable and fearful to her, and resulted in much mental suffering, accompanied with subsequent illness.

It appears that this lady had traveled a great deal, with a companion, in the United States, Canada, and Europe. The record further shows that the conductor of the train and the appellant's agent at Holly Springs knew that the schedule of the Frisco Railroad had been changed, so that the train left Holly Springs at an earlier time than previously. The superintendent did not know of this change personally. When the train was being detained at Oxford, the appellee requested the conductor to carry her on to Holly Springs, so that she could make the connection for Atlanta, and he told her that he could do nothing, as the superintendent had ordered the delay of the train at Oxford. The testimony in the record shows that the appellee received due courtesy, kind treatment, and a comfortable room at the hotel, and that no employe of the appellant was guilty of any abuse, insult, or oppression, but, on the other hand, they were all courteous, and guilty of no oppressive or offensive conduct toward her.

The only serious question presented in this appeal is whether the facts here justify the infliction of punitive damages. Of course, if there was no willful wrong or gross negligence on the part of the appellant railroad company, then punitive damages were not recoverable, and it would follow that no recovery could be had for the mental pain and suffering claimed by the appellee. But, on the other hand, if the appellant, through its servants, was guilty of willfulness or wantonness in delaying the train 2 hours and 30 minutes at Oxford, causing the appellee to suffer damages, resulting from the delay, then there was no error of the lower court in permitting the recovery of punitive damages in this case.

It seems that there were about 50 school girls at Oxford, attending a concert, who wanted to go to Holly Springs on the train upon which appellee was traveling, and they asked the railroad superintendent as an accommodation to them, to hold the train at Oxford until the concert which they were attending was

over. The desire of the superintendent to accommodate these young lady passengers, no doubt, prompted him to order this train held at Oxford for them until after the concert, so that they might board it and return to Holly Springs. He was under no duty or obligation whatever to do this, but he was under contractural obligation and duty to the appellee to perform his contract of transporting her to her destination without unnecessary and unreasonable delay.

The concert seems to have lasted 2 hours and 30 minutes, because the train was held for that length of time at Oxford for the young ladies, who boarded it and rode thereon to Holly Springs. But, in the meantime, here was another young lady passenger upon that train, who had paid appellant for her transportation to Holly Springs, and she expected, and had a right to expect, when she boarded the train at Vaiden, that she would be transported without unreasonable delay to her point of destination. And when the train was stopped at Oxford, and she learned that it was to be detained there for some length of time, she then complained to the conductor, and to the agent there, protesting against the delay, and notified them that she desired to make the connection at Holly Springs with the Frisco Railroad for Atlanta; but, notwithstanding this appeal by her to the conductor and the agent of the appellant company, the train was willfully and intentionally delayed at Oxford for 2 hours and 30 minutes, causing her the delay over night at Holly Springs, which resulted in the injuries complained of.

It is clear to us that the appellant railroad company was guilty of willful wrong, in this: That it knowingly and intentionally delayed the train at Oxford 2 hours and 30 minutes, when it was under contract, and public duty, to the appellee to transport her from Vaiden to Holly Springs on reasonable schedule time. This conduct amounts to willful neglect of duty. Vicksburg Co. v. Marlett, 78 Miss. 872, 29 South. 62.

It is true that all of the agents and servants of the appellant railroad company were courteous toward the appellee, but the willfulness which warants the infliction of punitive damages in this case consists of the treatment she received by being intentionally and willfully delayed at Oxford. Yazoo, etc., R. Co. v. Hardie, 100 Miss. 148, 55 South. 42, 967, 34 L. R. A. (N. S.) 740, 742, Ann. Cas. 1914A 323. A common carrier cannot willfully disregard the rights of a passenger, in order to accommodate other persons intending to become passengers by delaying a passenger train the unreasonable time of 2 hours and 30 minutes. 4 R. C. L. 1068, 1069. And even though the motive of the railroad superintendent was good, still the duty he owed appellee was before him, and he knowingly and intentionally violated it, and must suffer punishment in damages for the result. The case being one that justifies the infliction of exemplary damages, recovery for mental pain and suffering, shown by the evidence, was proper. Heirn v. McCaughan, 32 Miss. 17, 66 Am. Dec. 588; Yazoo, etc., R. Co. v. White, 82 Miss. 120, 33 South. 970; Burns v. Alabama, etc., R. Co., 93 Miss. 816, 47 South. 640; Railroad Co. v. Mitchell, 83 Miss. 179, 35 South. 339; Railroad Co. v. Harper, 83 Miss. 560, 35 South. 764; Yazoo, etc., R. Co. v. Hardie, 100 Miss. 132-148, 55 South. 42, 967, 34 L. R. A. (N. S.) 740, 742, Ann. Cas. 1914A 323; Western Union v. Rogers, 68 Miss. 748, 9 South. 823, 13 L. R. A. 859, 24 Am. St. Rep. 300; 4 R. C. L. 1003.

The judgment of the lower court is affirmed.

Affirmed.

NOTE.—*Punitive Damages for Disregard of Passenger's Rights.*—There is no doubt that the facts show that the carrier plainly disregarded plaintiff's rights in the instant case, in that it made choice between carrying out its contract with her or breaching it. But the circumstances do not show that anything more was contemplated than that she suffer delay during one night until the next morning. She notified the conductor she wished to go through to Atlanta that night, but how it was important that she should she did not state. Every courtesy was shown her and a comfortable room was secured for her in the city in which she was detained. Was the choice to commit breach of contract under the circumstance willful, so as to authorize the infliction of punitive damages?

In Fort v. Southern R. Co., 64 S. C. 423, 42 S. E. 196, there was just as plain a violation of plaintiff's rights, but the refusal was because of an emergency and it was not accompanied with any rudeness or wanton disregard of rights. It was held only actual damages were recoverable.

This court held, however, that the willful refusal of a conductor to stop for a passenger at a flag station subjects a carrier to punitive damages. Milhouse v. So. Ry., 72 S. C. 42, 52 S. E. 41, 110 Am. St. Rep. 620.

In the case cited, Yazoo, etc., R. Co., v. Hardie, 100 Miss. 148, 55 So. 42, 34 L. R. A., (N. S) 740, Ann. Cas. 1914 A, 323, it was said: "A railroad company is not liable for punitive damages for a mere failure to perform its contractual duty. * * * A railroad company which has violated its duty can be assessed with punitive damages only where there has been some intentional wrong, insult, abuse, harshness, or where there has been such gross neglect of duty as to evince reckless indifference to the rights of others."

Where a passenger was carried beyond her station and it appeared conductor said he could not

stop and went beyond and the passenger was made to get off three-quarters of a mile beyond, on a day that was windy and cold and sloppy from snow, the passenger, a woman, became sick, there was room in the evidence for finding an indifference to her rights authorizing exemplary damages. Bmghm. Ry. & L. Co. vs. Nolan, 134 Ala. 329, 32 So. 715.

In Harlan v. Wabash R. Co., 117 Mo. App. 537, 94 S. W. 737, it was said that for mere neglect in not stopping a train no punitive damages were allowable, but where there was willful and intentional wrong there might be. This was a case of direct promise to stop and then refusal, on a pretended excuse, to stop.

Where a passenger was carried beyond her station and there was merely gross negligence, but no evidence of wanton disregard of rights, no punitive damages are recoverable. So. Ry. v. O'Bryan, 119 Ga. 147, 45 S. E. 1000.

Where a passenger was compelled to stand in a rain storm by carrier's negligence and jeered at and tantalized by carrier's servants, during his enforced waiting, this authorizes instruction for punitive damages. L. & N. R. Co. v. Keller, 104 Ky. 768, 47 S. W. 1072.

If there is merely violation of contract for carriage and no bad faith, only actual damages are recoverable. Judice v. So. Pac. Co., 47 La. Ann. 255, 16 So. 816.

It is somewhat difficult to formulate a general principle in these matters. But it seems that though a contract for carriage is deliberately broken, carrier ought to be apprised of some special damages to ensue, if there is no humiliation of any sort put upon the passenger. If the passenger merely stands upon his undisputed rights, these may be breached without any more serious responsibility than for the carrier to pay the actual damages. Where a passenger is not stopped for so as to be let on, the case might be more serious, than where he is face to face with the conductor who may be breaching his contractual rights. C.

CORRESPONDENCE

THE CONSTITUTION IS THE HIGHER LAW.

Editor, Central Law Journal:

Permit me to comment on the publication in your issue of May 11, 1917, of the article by Mr. Preston A. Shinn, combating the several articles of the Honorable Walter Clark, of the North Carolina Supreme Court, denying the authority of the United States Supreme Court to declare Acts of Congress unconstitutional.

Until Justice Clark began this attack, the most pernicious offender was Melville Davisson Post, who, by a series of articles published in the Saturday Evening Post, undoubtedly managed to delude a large number of readers of said publication. There have been many other offenders. In this State of Pennsylvania a very learned gentleman, namely, Dean Trickett, of the Dickinson Law School, at one time published a work entitled, as I recall, "Judicial Usurpation," wherein he attempted to demonstrate that there was no warrant or authority for the power exercised by courts to declare an act unconstitutional.

I have read a number of these articles and treatises and in each and every one of them it has been declared that the framers of our Constitution had never indicated by word or deed that they intended to confer any such power upon the courts. In one of the articles so contributed by Mr. Post he garbled and distorted the entire meaning of the expression used by Mr. James Wilson, of Pennsylvania, in the Constitutional Convention, either deliberately or unconsciously suppressing about one-half of the sentence used. The heretical doctrines thus spread broadcast have met a ready acceptance by the dissatisfied and discontented in our national life, and particularly amongst those who favor the judicial recall and other doctrines subversive of our national integrity. Occasionally steps forth an antagonist to battle against these heresies—witness Rome G. Brown, Chairman of the Committee on Judicial Recall, appointed by the American Bar Association—but the demagogue is the popular hero.

I particularly like the article by Mr. Shinn, because it directly refutes the many false statements and invalid inferences relied upon by those who thus deny the authority of our courts in the premises.

As stated by Mr. Shinn, the records of the proceedings of the Constitutional Convention establish beyond question that the delegates there assembled did intend that the courts should have such power and did suppose that such power had been conferred. The proposal in the convention, that the judiciary should act with the legislative department in the enactment of laws, was rejected on the express ground that the judiciary had already been vested with the power to declare laws unconstitutional and, therefore, it would be unwise to vest them with this additional authority.

It was quite time that someone, in answer to Mr. Justice Clark and these other writers, should call attention to the fact that the conclusions of these gentlemen were drawn from false premises; that their theories were builded on misstatements and misquotations.

Yours very truly,

CHARLES B. LITTLE.

Scranton, Pa.

BOOK REVIEW

MAGISON AND BOUVE—MUNICIPAL CORPORATIONS IN MASSACHUSETTS.

Interesting indeed is the compilation in concise form of the statute law of Massachusetts as it relates to municipal corporations as compiled by Messrs. Frederick Hanretty Magison and Thomas Tracy Bouve, of the Massachusetts bar, and the annotation thereof in Massachusetts decision.

The historical introductions to each of the chapters, as well as the history itself shown in the brief summaries of the statutes from early Colonial days down to the present day are more than of mere local interest. They show progress from a simple civilization to the complex times in the views of legislators as the needs of one of our great states unfold themselves to their view. Many things are found in the earlier legislation, which suggest more or less dimly life in the cites, towns and neghborhoods of our early day. The town meetings where public questions were threshed out are different from assemblies of this time. We hark back to Paul Revere and his famous ride and we think of how all public affairs seemed more keenly personal than now, and how aggregations of people appeared then to be more intensely a collection of neighbors than now.

Take for example the department of relief and the excessive minutiae indicates this neighborly feeling. In these old days they were unwilling to generalize.

The chapters embrace towns, cities, fire prevention department, police power, meaning municipal regulation, poor relief, public health, roads, streets and bridges, parks and playgrounds, building inspection, births, marriages and deaths, public library, fisheries and game, civil service and intoxicating liquors.

It is said as to the last that: "Drinking had become during the eighteenth century and the first few years of the nineteenth, at least a universal custom throughout New England and Massachusetts had not fallen behind any of its neighbors in this regard." No doubt the neighborhood spirit was responsible in some measure for this.

The volume is, therefore, not alone interesting to the Massachusetts lawyer, but to many of the profession in other states. It shows what things have been attempted and what of them remained of more than passing interest.

The work is in one volume of nearly 1,000 pages, is in buckram binding and is published by Matthew Bender & Company, Albany, N. Y., 1917.

HUMOR OF THE LAW.

Subbubs—My neighbor has a big dog that we are all afraid of. What would you advise?

Lawyer—Get a bigger one. Five dollars, please.—Boston Transcript.

An old negro was walking down the road when he was run into by a party of joyriders and thrown to the side of the road. A passerby who had witnessed the accident hurried to assist him.

"Did you notice their number?" he asked. "You can probably get damages out of them."

The old negro looked ruefully at his scratches and bruises and said:

"Quit you' funnin', white man. Dis ain' no joke. What I needs am repairs, not mo' damages."

"Your honor," informed the policeman as he pointed to the prisoner, "he refused to rise while the band played "The Star-Spangled Banner."

"I did not recognize the tune," explained the culprit hastily.

"Now, my dear man," said the judge sympathetically, "let me whistle it for you, so that hereafter you may distinguish it."

The judge whistled the melody and the prisoner listened intently. When his Honor had finished, the defendant exclaimed generously:

"Your Honor, if the band had played the tune as you whistled it, I would not be here to-day."

"Discharged!" interrupted the well-pleased judge.

"But the band would," concluded the man in an undertone as he hastily retired from the courtroom.

Patrick Quinn was led before Judge Handy in the Tombs police court recently. He had been arrested the night before.

"You are charged," began the judge, "with being drunk last night on Water—"

He got no further. Patrick exploded in righteous indignation.

"'Tis a lie," he cried, "it was whiskey."

After he had composed his own countenance, and after all the other auditors had subsided, Judge Handy said:

"You interrupted, Patrick. I was about to say you are charged with being drunk on Water street."

"Well," said Patrick, sturdily, "I might have taken it in the street, but not in my whiskey."

He was led back to his cell to await a calmer moment.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co. St. Paul, Minn.

1. **Adverse Possession** — Color of Title.—Where grantor having no title purports to convey, and the grantee enters and conveys land in fee as security for debt, and debt is reduced to judgment and land is sold in execution as property of first grantee, purchaser entering under sheriff's deed in fee in good faith and remaining in possession for seven years acquired a prescriptive title.—Spurlin v. Towns, Ga., 91 S. E. 479.

2. **Attorney and Client**—Contingent Fee.—Under contract between attorney and client for contingent fee of one-half of moneys secured for client in any way in suit for breach of marriage promise, the attorney could not have one-half the property acquired by client by operation of law when she married the adverse party, nor could he recover any part of the value of such marriage.—Crow v. Mitchell, Mo., 192 S. W. 417.

3.——Lien for Fee.—In action to cancel deeds from plaintiff to one defendant and from such defendant to others, where attorney employed by defendant to list property for taxation had secured judgment and lien for his fee, such lien was enforceable against the land, although the deeds were set aside, the court on appeal having reversed judgment canceling the deeds.—Morse v. Duryea, Ky., 192 S. W. 477.

4. **Bankruptcy**—Assets.—To entitle petitioner to be adjudicated voluntary bankrupt, it is not essential that it should own any property, or that its property should be subject to administration in bankruptcy.—In re Hargadine-McKittrick Dry Goods Co., U. S. D. C., 239 Fed. 155.

5.——Conditional Sale Contract.—Under Personal Property Law N. Y., § 62, an unrecorded conditional sale contract is valid against the creditors of the buyer, so that the trustee in bankruptcy acquires no rights to the property under Bankr. Act, § 47a2.—Mergenthaler Linotype Co. v. Hull, U. S. C. C. A., 239 Fed. 26.

6.——Injunction.—State court has no power by any form of order or injunction to limit operation of Bankruptcy Act, or impair jurisdiction of court of bankruptcy, and cannot enjoin corporation from filing petition for voluntary bankruptcy.—In re Hargadine-McKittrick Dry Goods Co., U. S. D. C., 239 Fed. 155.

7.——Insurance.—The trustee of a bankrupt cannot recover, after the bankrupt's death, the amount of a policy payable to his wife, with right to change beneficiaries, which the company had paid to the wife without notice of any adverse claim thereto.—Frederick v. Metropolitan Life Ins. Co. of New York, U. S. C. C. A., 239 Fed. 125.

8.——Judicial Sale.—A sale through bankruptcy proceedings is a judicial sale, subject to the same rules as an auction; so that a bid may be withdrawn before the hammer falls.—In re Glas-Shipt Dairy Co., U. S. C. C. A., 239 Fed. 122.

9. **Banks and Banking**—Collateral Security.—Where commercial paper indorsed by debtor is deposited with bank as collateral security, bank takes as pledgee and obtains possession of paper and on maturity before payment of debt may enforce collection and apply proceeds to payment of debt.—Farmers' Nat. Bank of Beaver Falls v. Nelson, Pa., 100 Atl. 136.

10.——Mismanagement.—Directors of a bank are not liable to stockholders for alleged mismanagement occurring prior to their respective incumbencies.—Oriansky v. Johnson, Miss., 74 So. 113.

11. **Bills and Notes**—Consideration.—Where a disputed claim might have been litigated, note given in settlement, fairly made, in good faith, without mistake, undue influence, misrepresentation, or fraud, is valid, and based on a sufficient consideration.—First Nat. Bank v. Harkey, Okla., 163 Pac. 273.

12.——Quantum Meruit.—If notes issued by a corporation, for brokers' services in procuring munition contracts, were void because contract was unauthorized, subsequent holders could have no claim upon a quantum meruit against corporation.—Aetna Explosives Co. v. Bassick, N. Y., 163 N. Y. Supp. 917.

13.——Waiver.—In suit against one as maker of note, wherein he claimed that another was not an indorser, but was real maker and principal, he could not complain that no notice of non-payment had been given such other, or that it did not waive such notice.—Morrison v. Citizens' & Southern Bank, Ga., 91 S. E. 509.

14.——Waiver.—Where a father was by fraud practiced upon his son induced to execute note in part payment of price of newspaper purchased by son, acts of son, after knowledge of fraud, in collecting and retaining money by virtue of

contract, held waiver of fraud, and neither son not father's executors may rely on that defense in action on note.—Mackenzie v. Eschmann's Ex'rs, Ky., 192 S. W. 521.

15. **Brokers**—Commissions. — Plaintiff, who notified defendant that a bank would shortly need vault doors and other appliances, which, after plaintiff had furnished blueprints, etc., defendant sold to bank, held entitled to commissions as a broker.—Diebold Safe & Lock Co. v. Shelton, Tex., 192 S. W. 340.

16.—Implied Promise.—If mining company, knowing investment company was endeavoring to sell its mine,, acquiesced in its efforts and accepted offer of purchaser procured by it, law implied promise on mining company's part to pay investment company reasonable worth of services.—Ham & Ham Lead & Zinc Inv. Co. v. Catherine Lead Co., Mo., 192 S. W. 407.

17.——License.—A city ordinance licensing real estate brokers does not apply to one engaged in other business who attempted as agent, to dispose of oil leases held by another.—Engles v. Blocker, Ark., 192 S. W. 193.

18. **Carriers of Goods**—Bill of Lading.—It is the duty of a carrier to issue a proper bill of lading and ship cabbage loaded on its cars, and an offer to issue a bill with notation, "More or less frozen when received," where such was not the case, was not a fulfillment of such duty. —Dobbins v. Delaware, L. & W. R. Co., N. Y., 163 N. Y. Supp. 849.

19.——Bill of Lading.—Provision in bill of lading that "loss or damage" shall be computed on basis of value of property is not applicable to delay in transportation, but to loss or injury to goods while in transit.—Chicago, R. I. & P. Ry. Co. v. Cunningham Commission Co., Ark., 192 S. W. 211.

20.——Burden of Proof.—A carrier is liable for damages to a piano shown to have been received by it in good condition, and to have been delivered in damaged condition, unless it shows that the injury was not received while it had possession or that it resulted from a cause, liability for which was excepted by the bill of lading.—Spann v. Alabama & V. R. Co., Miss., 74 So. 141.

21.——Connecting Carrier.—Where a connecting carrier is sued for loss and damage of an interstate shipment, the rights and remedies of the shipper to be determined under federal laws existing prior to enactment of the Carmack Amendment, but bill of lading issued by the initial carrier is to be considered under provisions of Carmack Amendment as bill of lading of connecting carrier, and binding in all of its provisions that are valid and applicable to the suit.—Pennington v. Grand Trunk Western Ry. Co., Ill., 115 N. E. 170.

22.——Delay.—An unnecessary delay of 18 hours in the transportation of a car of poultry over a line of railroad warrants submission of question of negligence of carrier.—Stewart Poultry Co. v. Erie R. Co., Kan., 163 Pac. 448.

23.——Transportation and Switching.—Test of distinction between "transportation" and "switching" as affecting rates for freight service is whether service was under trainmaster's direction or yardmaster's direction.—St. Louis, I. M. & S. Ry. Co. v. Clark Pressed Brick Co., Ark., 192 S. W. 382.

24. **Carriers of Passengers**—Baggage.—An order of the Public Service Commission, made on complaint of traveling salesmen, fixing a different and lesser charge for storage of baggage on certain days for such travelers than was fixed by general order governing charges on baggage of other persons, was unfair, unreasonable, and void.—Atchison, T. & S. F. Ry. Co. v. Public Service Commission of Missouri, Mo., 192 S. W. 460.

25.——Burden of Proof.—In action by passenger for loss of personal property in sleeping car, plaintiff has the burden of proving the loss was caused by the carrier's negligence.—Randall v. New York, N. H. & H. R. Co., Mass., 115 N. E. 231.

26.——Intoxication.—Where a passenger is received in an intoxicated condition, which is apparent to the carrier's employes, a higher degree of care toward him is required than in case of a passenger in the full possession of his faculties.—Kradel v. Pittsburgh, H., B. & N. C. Ry. Co., Pa., 100 Atl. 128.

27.——Public Service Commission. — Under Laws 1913, p. 556, authorizing Public Service Commission to require service for the comfort and convenience of passengers, testimony that defendant railway company operated its sleeping car service for 30 years through territory increasing in population sustains an order requiring its restoration for a year, where defendant did not disclose its entire earnings from the abandoned service.—State ex rel. Missouri Pac. Ry. Co. v. Atkinson, Mo., 192 S. W. 86.

28.—Regulation.—A regulation that certain trains shall not stop at certain stations is not unreasonable, and a passenger having actual notice that a train will not stop at the station called for by his ticket cannot recover damages for being carried beyond such station.—Meeder v. Seaboard Air Line Ry., N. C., 91 S. E. 527.

29.——Sudden Starting.—Proof of the sudden starting forward of an electric car as a passenger was alighting raises the inference that it was caused by the motorman; there being no other reasonable or probable cause to which to attribute it.—Hecke v. Dunham, Mo., 192 S. W. 120.

30. **Commerce**—Carmack Amendment. — Proviso of Carmack Amendment, preserving remedies or rights of action under existing laws, refers only to remedies existing under federal laws, and does not preserve rights or remedies existing under state laws prior to Carmack Amendment.—Pennington v. Grand Trunk Western Ry. Co., Ill., 115 N. E. 170.

31.——Employment.—Where a railroad carpenter was killed by a train as he went across the track to buy a newspaper, he was not then engaged in interstate commerce; and action for his death was not within provisions of federal Employers' Liability Act.—Illinois Cent. R. Co. v. Archer, Miss., 74 So. 135.

32. **Common Carriers**—Public Service Commission.—The word "terminals," as used in Public Service Commissions Law, § 35, is ap-

plicable, not only to the portion of the main track, sidings, and team tracks used in loading and unloading freight, but also to industrial switches, at which freight shipments terminate; a terminal point being a place of consignment. —People ex rel. New York Cent. R. Co. v. Public Service Commission of New York, Second District, N. Y., 163 N. Y. Supp. 777.

33. **Conspiracy** — Bankruptcy. — Defendants may be convicted of conspiracy to receive the property from a bankrupt after bankruptcy, though the property was taken out of the bankrupt's possession two days before the petition in bankruptcy was filed.—Knoell v. United States, U. S. C. C. A., 239 Fed. 16.

34.——Police Power.—Where mining company owning mining village leased houses and provided that streets, etc., were subject to its police regulations, and that it might keep out such persons as it saw fit, plaintiff's selling of a high explosive to company's employes and tenants justified his exclusion from streets, and company was not liable for conspiracy.—Harris v. Keystone Coal & Coke Co., Pa., 100 Atl. 130.

35. **Constitutional Law**—Freedom of Speech. —Cr. Code, § 83, forbidding corporations from making contributions in connection with an election at which representatives are to be voted for, does not prohibit the freedom of speech or of the press.—United States v. United States Brewers' Ass'n, U. S. D. C., 239 Fed. 163.

36. **Death**—Funeral Expenses.—Under the federal Employers' Liability Act, the widow and children of a deceased brakeman cannot recover from his employer his funeral expenses.—Philadelphia & R. Ry. Co. v. Marland, U. S. C. C. A., 239 Fed. 1.

37. **Deeds**—Delivery.—If grantor voluntarily left deed in her agent's possession for sole purpose of holding it for her until abstracts were examined and approved, so that conveyance to an undisclosed purchaser might be completed by her in subsequent visit, there was no delivery to the agent as grantee, when he filled in his own name as grantee.—Allen v. Powell, Ind., 115 N. E. 96.

38.——Delivery.—Where deed is signed and delivered to depositary with directions to deliver it to grantee upon death of grantor, the instrument, even in absence of contract and consideration, will operate to convey title if grantor at time of delivery parted with control and dominion over writing, such instrument being regarded as present act of grantor.—Foulkes v. Sengstacken, Ore., 163 Pac. 311.

39. **Divorce**—Estate by Entirety.—A divorce decree which does not dispose of the property owned by the parties in entirety destroys the estate by the entirety and vests the legal title in the parties as tenants in common.—Aeby v. Aeby, Mo., 192 S. W. 97.

40.——Reform in Conduct.—Where defendant wife was addicted to use of habit-forming drugs, when he left her, but reformed by time he filed bill for divorce, he is not entitled to divorce.—Smithson v. Smithson, Miss., 74 So. 149.

41. **Dower**—Miner and Minerals.—A widow is entitled to dower in such mines and quarries as were actually opened and used during lifetime of her husband.—Shupe v. Rainey, Pa., 100 Atl. 138.

42. **Electricity**—Notice of Danger.—Breaking of telephone wire not carrying current of sufficiently high voltage to be dangerous, unless coming in contact with other wires, was notice that it might become dangerous and imposed duty of examination.—Grossheim v. Pittsburgh & Allegheny Telephone Co., Pa., 100 Atl. 126.

43. **False Imprisonment**—Illegal Arrest. — Where a railway ticket agent received suspicious, but valid, currency in selling plaintiff a ticket, and later made him exchange the bill for other money, and thereafter plaintiff was arrested for passing counterfeit money, defendant railway company held not liable for illegal arrest and false imprisonment.—Sacks v. St. Louis & S. F. R. Co., Mo., 192 S. W. 418.

44.——Malice.—Where defendant's constable unlawfully and violently arrested plaintiff and ejected him from defendant's medicine show, malice would be imputed to constable because of unlawful nature of act.—Rucker v. Barker, Tex., 192 S. W. 528.

45. **Frauds, Statute of**—Part Payment.—The bar of statute of frauds (L. O. L., § 808), making void oral agreements for sale of land, is not removed by part payment of purchase price or payment of taxes, such acts not constituting part performance.—Foulkes v. Sengstacken, Ore., 163 Pac. 311.

46. **Fraudulent Conveyances** — Evidence. — Though title to land has been in name of husband and wife for 24 years, a conveyance by husband to a son, and by son to mother, will not be set aside as fraudulent, where it appears that mother purchased and paid for land with her own money.—Gill v. Newhouse, Mo., 192 S. W. 431.

47.——Homestead.—In suit to set aside a conveyance of land as fraudulent, that the property was a homestead was a defense, which it rested with defendant to sustain, and only burden that rested on plaintiff if homestead character was established was to show that the homestead had been abandoned.—Colgrove v. Falfurrias State Bank, Tex., 192 S. W. 580.

48. **Highways**—Obstruction.—The owner of land who maintains a fence built by others under his orders, knowing that it is in the position it occupies, which is within a public highway, is guilty of obstructing a public highway under Rev. St. 1909, § 10533.—State v. Asbell, Mo., 192 S. W. 469.

49.——Trespass.—Action of overseer of road district in cutting trees off lands along a public road constituted a trespass by the overseer for which the county was not liable in absence of some order of county judge directing cutting.—J. H. Hamlin & Sons v. Grant County, Ark., 192 S. W. 225.

50. **Insurance**—Agency.—An insurance company was bound by acts of its agent in excess of his authority in delivering subject to approval within 30 days a policy of casualty insurance containing a provision that it should take effect upon delivery.—Rivard v. Continental Casualty Co., Me., 100 Atl. 101.

51.——Breach of Warranty.—Proof that some years before making his application insured had suffered from facial paralysis and from malarial poisoning, from both of which he recovered, does not show breach of warranty that he was sound and whole and had never been subject to chronic disease.—Metropolitan Casualty Ins. Co. v. Cato, Miss., 74 So. 114.

52.——Breach of Warranty.—A plea alleging habitual use of intoxicating liquor by an applicant for accident insurance does not allege breach of a warranty of temperate habits.—Metropolitan Casualty Co. v. Cato, Miss., 74 So. 118.

53.——Felonious Killing.—If felonious killing of insured by beneficiary rendered policies void, burden to establish such killing rested on insurer, and finding of coroner, or newspaper accounts of homicide, did not establish felony, and burden did not rest on beneficiary, in her suit against insurer, to establish her innocence

of felonious homicide.—New York Life Ins. Co. v. Veith, Tex., 192 S. W. 605.

54.——Hazardous Employment. — Insurer, which received premiums on policy under Workmen's Compensation Law in protection of membership corporation and employes engaged in hazardous employment for gain, could not be heard to say, in proceedings for compensation of widow of deceased employe, that it should not be called upon to pay indemnity on ground membership corporation had no right to engage in occupation.—Uhl v. Hartwood Club, N. Y., 163 N. Y. Supp. 744.

55.——Waiver.—Approval by fire insurance company through general agent of transfer of policy to buyer of property with knowledge of ownership by vendor and of vendor's contract of sale with third person at time of deed and assignment to assignee of policy, amounted to waiver of conditions of policy, respecting title to property and requiring sole ownership in insured.—Sowell v. London Assur. Corp., Cal., 163 Pac. 242.

56. **Intoxicating Liquors**—Evidence.—In prosecution for engaging in business of selling intoxicants, evidence showing acts to have been done through agents or employes of defendant sustains conviction, where seller is reasonably identified as defendant's agent.—State v. Otto, S. D., 161 N. W. 340.

57.——Indictment.—Indictment under Ky. St. § 2569b, for delivery in county where sale was prohibited of intoxicants not for the personal and family use of consignee held valid, though erroneously alleging local option law was in force; sale being prohibited by special act.—Adams Express Co. v. Commonwealth, Ky., 192 S. W. 56.

58. **Landlord and Tenant**—Extension of Lease. —Where a lessee was entitled to an extension for one year only when his covenants for preceding year had been performed, and there was a substantial failure to perform such conditions precedent, lessee was not entitled to performance of provision for an extension.—Haughton v. Cook, Vt., 100 Atl. 115.

59.——Holding Over.—Where the children of the record owner's lessee continued to live upon the land until date of suit, they continued to hold under the lease, although the original lessee had died.—W. T. Carter & Bro. v. Collins, Tex., 192 S. W. 316.

60.——Obvious Danger.—Where a tenant sustained injury by stepping from platform, danger being perfectly apparent, landlord was under no obligation to disclose it, and was not liable for injury.—Thomasson v. Hiatt, Ky., 192 S. W. 19.

61.——Public Policy.—Where mining company owned land upon which mining village stood, including highways, and leased houses to tenants, provision therein that all streets, etc., were private roads subject to lessor's police regulations, and that it might keep out such persons as it saw fit, was not against public policy, and was valid.—Harris v. Keystone Coal & Coke Co., Pa., 100 Atl. 130.

62. **Libel and Slander**—Newspaper Publication.—Newspaper article charging plaintiff with running a baby farm, where she mistreated, if she did not actually murder, babies given to her custody and with secretly disposing of their bodies, was clearly libelous per se.—Rail v. National Newspaper Ass'n, Mo., 192 S. W. 129.

63. **Livery Stable and Garage Keepers**—Lien. —Burns' Ann. St. 1914, § 8294a, providing for a lien upon automobiles for work done and supplies furnished by garage owners, etc., being declaratory of common law with exception of lien for supplies, must be interpreted according to common-law principles.—Vaught v. Knue, Ind., 115 N. E. 108.

64. **Malicious Prosecution**—Abandonment. — Where a prosecution for embezzlement was abandoned, as the result of compromise solicited by the accused, this was not such an equivalent of an acquittal as to justify a suit for malicious prosecution.—Irby v. Harrell, La., 74 So. 163.

65.——Evidence.—Where it appeared upon trial that plaintiff was guilty of an indictable misdemeanor, under Rev. Codes, § 7145, and not under § 7146, par. 2, as charged, so closely akain thereto that county attorney inadvertently charged under wrong section, want of probable cause was rebutted, and prosecutor could not be held in damages.—Nettleton v. Cook, Idaho, 163 Pac. 300.

66.——Public Policy.—Public policy requires that, where one person has cause to believe that a crime has been committed by another, he ought not to be subjected to an action, if in good faith he makes complaint to the proper court or magistrate charging such crime.—Desmond v. Fawcett, Mass., 115 N. E. 280.

67. **Master and Servant**—Average Wages.— Under Workmen's Compensation Law, § 14, and § 3, subd. 9, defining "wages," where a taxicab driver was accustomed to receive a constant amount in tips, held that, in determining average weekly wages of employe as a basis of award, tips should be added to regular wages paid by employer.—Sloat v. Rochester Taxicab Co., N. Y., 165 N. Y. Supp. 904.

68.——Caddy.—Under Civ. Code, § 1965, despite § 2009, country club caddy held employe of club within Workmen's Compensation Act, though paid by golf player he served, and under latter's direction and control while serving.—Claremont Country Club v. Industrial Accident Commission of California, Cal., 163 Pac. 209.

69.——Casual Employment.—A plasterer, employed at rare intervals by a brewery to plaster various additions to the plant, for no stated time, and at no certain intervals, is in casual employment, and not entitled to compensation, within Workmen's Compensation Act, § 5.—Aurora Brewing Co. v. Industrial Board of Illinois, Ill., 115 N. E. 207.

70.——Contributory Negligence.—Under St. 1911, c. 751, § 1, contributory negligence of plaintiff, or negligence of his fellow servant, is no defense to action for injuries to servant suffered subsequent to enactment of Workmen's Compensation Act, where the employer is not a subscriber to that act.—Bernabeo v. Kaulback, Mass., 115 N. E. 279.

71.——Course of Employment.—Even though night watchman was assaulted by a personal enemy, his employer would be liable if assault was made because he was night watchman engaged at time in duties of his employment.—Ohio Bldg. Safety Vault Co. v. Industrial Board, Ill., 115 N. E. 149.

72.——Course of Employment.—A blacksmith employed in a large factory, while in another room than that in which he worked, waiting in line for his pay envelope, who was jostled and thrown to the floor, received injury arising out of his employment.—Pekin Cooperage Co. v. Industrial Board of Illinois, Ill., 115 N. E. 128.

73.——Employers' Liability Act.—In railroad switchman's action for injuries under federal Employers' Liability Act, it was not necessary to mention act in declaration, if facts were stated giving plaintiff cause of action under it. —Wagner v. Chicago, R. I. & P. Ry. Co., Ill., 115 N. E. 201.

74.——Employment.—Insured, who at time policy was issued and at time of accident owned 95 per cent of the stock of the employer company, is "employe" of company, within Workmen's Compensation Law.—Kennedy v. Kennedy Mfg. & Engineering Co., N. Y., 163 N. Y. Supp. 944.

75.——Maritime Employment.—The occupation of stevedore is in essence maritime and subject to rules applicable to seamen.—North Pacific S. S. Co. v. Industrial Acc. Commission of California, Cal., 163 Pac. 203.

76.——Non-Residents.—Pub. Acts 1913, c. 138, as to workmen's compensation, provides compensation for non-residents as well as residents; and under all contracts of employment wherever and by whomsoever made.—Douthwright v. Champlin, Conn., 100 Atl. 97.

77.——Partial Disability.—A servant, who lost one hand, and two fingers and parts of two fingers on the other hand, but could nevertheless pick up a lead pencil, write his name, and dress himself, was entitled to award only for perma-

nent partial disability.—Carkey v. Island Paper Co., N. Y., 163 N. Y. Supp. 710.

78.——Partial Disability. — Amputation of eighth of inch of first bone or phalange of second finger of employe's right hand did not constitute loss of phalange, and hence loss of half the finger within Workmen's Compensation Law, as amended.—Geiger v. Gotham Can Co., N. Y., 163 N. Y. Supp. 678.

79.——Presumption.—Presumption is that a claim comes within the Workmen's Compensation Law.—Uhl v. Hartwood Club, N. Y., 163 N. Y. Supp. 744.

80.——Respondeat Superior.—An allegation that defendant owned the automobile that another who had charge and control thereof negligently caused the accident to plaintiff is insufficient to show the agency of the person operating the automobile.—Stein v. Lyon, N. Y., 163 N. Y. Supp. 380.

81.——Sole Cause of Injury.—In an action under the federal Employers' Liability Act, a recovery for injuries to a servant is not defeated by proof of his negligence, unless it is shown that such negligence was the sole cause of the injury.—Southern Ry. Co. v. Mays, U. S. C. C. A., 239 Fed. 41.

82.——Workmen's Compensation Act.—Workmen's Compensation Act as applied to seamen limiting right to compensation to proceedings under provisions of the act itself imports no more than that if a seaman is injured and seeks recovery in personam he can proceed only under the act before the Accident Commission.—North Pacific S. S. Co. of Industrial Acc. Commission of California, Cal., 163 Pac. 199.

83.——Workmen's Compensation Act.—Caddy of country club held employe of club, within Workmen's Compensation Act, though he reported for duty and was employed only on specific days.—Claremont Country Club v. Industrial Accident Commission of California, Cal., 163 Pac. 209.

84.——Workmen's Compensation Act.—The word "casual," in Workmen's Compensation Act, § 5, defining "employe" as every person in service of another, not including person whose employment is casual or not in usual course of trade of his employer, means occasional, irregular, or incidental, in contra-distinction from stated or regular.—Aurora Brewing Co. v. Industrial Board of Illinois, Ill., 115 N. E. 207.

85.——Workmen's Compensation Act.—Workmen's Compensation Act applies to a blacksmith employed in large factory, though there was no machinery in the room where he worked, but was compelled to pass through rooms where machines were used, and who in waiting for his pay envelope was jostled and injured.—Pekin Cooperage Co. v. Industrial Board of Illinois, Ill., 115 N. E. 128.

86.——Workmen's Compensation Act.—Where injured servant was taken to a hospital by the master, but claimed that he was not receiving proper care, mere statement to that effect by his wife to an employe of the master is not a demand for medical assistance, as required by the Workmen's Compensation Law.—Junk v. Terry & Tench Co., N. Y., 163 N. Y. Supp. 836.

87. **Municipal Corporations**—Barrier Against Accident.—The negligent failure of a city to erect a barrier between a sidewalk and a ditch between the walk and the street does not render the city liable for injuries to a driver who negligently permitted his horse to draw him onto the sidewalk.—Duley v. Town of Smithland, Ky., 192 S. W. 21.

88.——Contributory Negligence.—There being no evidence that anyone was in danger from a runaway horse on a residence street, or that deceased, voluntarily incurring the risk of attempting to stop it, did so to save human life, he was not relieved from charge of contributory negligence.—Devine v. Pfaelzer, Ill., 115 N. E. 126.

89.——Contributory Negligence.—As the whole of a street is open to public travel, a pedestrian is not guilty of contributory negligence as a matter of law in using carriageway when sidewalk is obstructed.—City of Superior v. Olt, U. S. C. C. A., 239 Fed. 100.

90.——Parks.—Where city under charter authority maintains a park primarily as a source of revenue, the duty of its maintenance in safe condition for use is ministerial, and municipal liability attaches to breach of such duty.—Cornelisen v. City of Atlanta, Ga., 91 S. E. 510.

91.——Street Obstruction.—Generally at common law, driver of a wagon upon a highway is under no duty to carry a light to warn others of presence of his vehicle or its load and whether failure to warn other travelers of obstruction when he stops can be said to be negligence must depend upon circumstances.—Roper v. Greenspon, Mo., 192 S. W. 149.

92. **Pledges**—Particular Debt.—Where note is pledged before maturity as collateral for particular debt which is afterwards paid, holder of collateral note cannot collect it if person liable for its payment has paid it to pledgor, the original payee, but while any part of debt secured is unpaid, holder may collect it, or enough to satisfy whatever remains due on claim thereby secured.—Morrison v. Citizens' & Southern Bank, Ga., 91 S. E. 509.

93. **Principal and Agent**—Disclosed Principal. —An agent of a disclosed and known principal, conducting a checking account in a bank in his own name, who overdraws his account and executes his own checks on another bank to make the overdraft good, is personally liable.—Lutz v. Williams, W. Va., 91 S. E. 460.

94. **Principal and Surety**—Discharge. — The surety on a building contractor's bond is discharge from liability for amounts paid by the owner above the contract price for labor and materials by the owner's payment of the entire contract price prior to the completion of the building, without requiring receipts for labor and materials, as required by the contract.—United States Fidelity & Guaranty Co. v. Citizens' Building & Improvement Co., Colo., 163 Pac. 281.

95. **Railroads**—Crossing Accident.—That railroad's crossing gate is open is invitation to cross, but will not excuse traveler from exercising care, and absence of flagman does not absolve traveler from exercise of care whether or not one has usually been station at crossing. —Swigart v. Lusk, Mo., 192 S. W. 138.

96. **Sales**—Rescission.—Where parties to sale of stallion specially limited buyers' remedy to return of horse within time specified, buyers were limited to relief agreed upon, and, in absence of fraud of sellers in securing contract, cannot resort to rescission or other remedies against holder of notes given for price.—First Nat. Bank of Lafayette, Ind., v. Fuller, Tex., 191 S. W. 830.

97.——Warranty.—On breach of warranty of fitness for particular purpose, buyer may recover anticipated profits, where business of which he was deprived was contemplated by parties, and where such profit is reasonably certain, even though speculative and uncertain. —Bishop-Babcock-Becker Co. v. Estes Drug Co., Okla., 163 Pac. 276.

98. **Seduction**—Promise of Marriage. — In prosecution for seduction under promise of marriage, where accused had broken marriage promise, it is no defense that thereafter prosecutrix refused to marry him when he renewed his promise.—Bollin v. State, Ark., 192 S. W. 196.

99. **Vendor and Purchaser**—Fraud. — Where the purchaser of land was a carpenter, known to the vendor's agent to be ignorant of farm values, representations made by the agent as to the number and quality of fruit trees on the land known to him to be false, or made with intent to have them acted on without knowing whether they were true or false, are fraudulent. —Mitchell v. Coleman, Ark., 192 S. W. 231.

100.——Unrecorded Deed.—In action to recover land claimed under unrecorded destroyed deed, defendant, thereafter purchasing from same grantor for valuable consideration without actual notice of previous deed, was an innocent purchaser who would get title to the land.—Lawson v. Prosser, Ga., 91 S. E. 469.